

FIRST REGULAR SESSION

SENATE BILL NO. 680

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KOSTER.

Read 1st time March 1, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

2580S.011

AN ACT

To amend chapter 338, RSMo, by adding thereto fourteen new sections relating to pharmacy benefit managers.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 338, RSMo, is amended by adding thereto fourteen
2 new sections, to be known as sections 338.316, 338.317, 338.318, 338.319,
3 338.320, 338.321, 338.322, 338.323, 338.324, 338.325, 338.326, 338.327, 338.328,
4 and 338.329, to read as follows:

**338.316. 1. Sections 338.316 to 338.329 shall be known and may
2 be cited as the "Missouri Pharmacy Benefits Managers' Fair Trade
3 Practice Act".**

4 **2. A pharmacy benefits manager is subject to sections 338.316 to
5 338.329 if the pharmacy benefits manager provides claims processing
6 services or other prescription drug or device services, or both, to
7 patients who are residents of Missouri. No pharmacy benefits manager
8 shall do business or provide services in Missouri unless the pharmacy
9 benefits manager is in full compliance with sections 338.316 to 338.329. If
10 a pharmacy benefits manager becomes insolvent or ceases to do
11 business in Missouri in any assessable or license year, the pharmacy
12 benefits manager shall remain liable for the payment of the assessment
13 for the period in which it operated as a pharmacy benefits manager in
14 Missouri.**

**338.317. 1. Before an initial or renewed execution of a pharmacy
2 benefits manager contract, the pharmacy benefits manager shall inform
3 the pharmacy or pharmacist in writing of the number of and other
4 relevant information concerning patients eligible to be served under
5 the pharmacy benefits manager contract.**

6 2. Before an initial or renewed execution of a pharmacy
7 benefits manager contract, and thereafter upon reasonable request
8 from a pharmacy or pharmacist with whom a pharmacy benefits
9 manager contracts, a pharmacy benefits manager shall make available
10 to the pharmacy or pharmacist any:

11 (1) Benchmark and rate used to compute reimbursement of
12 the pharmacy or pharmacist for medications and products dispensed
13 under the pharmacy benefits manager contract; and

14 (2) Schedule or other listing of maximum allowable costs.

15 3. There shall be a separate pharmacy benefits manager contract
16 with each pharmacy or pharmacist for each of the pharmacy benefits
17 manager's provider networks.

18 4. Pharmacy benefits manager contracts providing for indemnity
19 of the pharmacy or pharmacist shall be separate from contracts
20 providing for cash discounts.

21 5. A pharmacy benefits manager shall not require that a
22 pharmacy or pharmacist participate in one pharmacy benefits manager
23 contract in order to participate in another contract.

24 6. A pharmacy benefits manager shall not require that any other
25 pharmacy or pharmacist also participate in a contract in order to allow
26 one pharmacy to sign a contract. Any pharmacy may opt out of a
27 contract.

28 7. A pharmacy benefits manager shall not auto enroll or
29 passively enroll the pharmacy on a contract. The pharmacy shall sign
30 a contract before assuming responsibility to fill prescriptions.

31 8. A pharmacy benefits manager shall establish rural payment
32 rates for pharmacies that do not have competition within fifteen miles.

33 9. A pharmacy benefits manager shall not discriminate between
34 pharmacies or pharmacists on the basis of co-payments or days of
35 supply.

36 10. All pharmacy benefits manager contracts shall provide
37 specific time limits for the pharmacy benefits manager to pay the
38 pharmacy or pharmacist, or both, for pharmacist's services rendered.

39 11. No pharmacy benefits manager contract shall mandate that
40 any pharmacy or pharmacist change a patient's drug unless the
41 prescribing practitioner so orders.

42 12. No pharmacy benefits manager contract shall mandate basic

43 record keeping by any pharmacy or pharmacist that is more stringent
44 than required by state or federal laws or regulations.

45 13. All pharmacy benefits manager contracts shall require use of
46 uniform prescription drug cards that have all information necessary for
47 the pharmacist to be able to adjudicate the claim. If the pharmacy
48 benefits manager has not provided the patient with an insurance card
49 on the first day of eligibility, the pharmacist may bill for the time that
50 it takes to get the appropriate information from the pharmacy benefits
51 manager.

52 14. A pharmacy benefits manager shall file its contract forms for
53 pharmacy benefits manager contracts with the commissioner thirty
54 days before the first use of the pharmacy benefits manager contract
55 forms in Missouri.

56 15. A pharmacy benefits manager shall serve as or act as a
57 fiduciary for the covered entity.

338.318. 1. Before terminating a pharmacy or pharmacist from
2 a pharmacy benefits manager's provider network, the pharmacy
3 benefits manager shall give the pharmacy or pharmacist a written
4 explanation of the reason for the termination thirty days before the
5 actual termination unless the termination is taken in reaction to:

- 6 (1) Loss of license;
- 7 (2) Loss of professional liability insurance; or
- 8 (3) Conviction of fraud or misrepresentation.

9 2. No pharmacy benefits manager shall terminate a contract with
10 a pharmacy or pharmacist or terminate, suspend, or otherwise limit the
11 participation of a pharmacy or pharmacist in a pharmacy benefits
12 manager's provider network or audit a pharmacy or pharmacist
13 because:

- 14 (1) The pharmacy or pharmacist expresses disagreement with the
15 pharmacy benefits manager's decision to deny or limit benefits to a
16 patient;

- 17 (2) The pharmacist discusses with a patient any aspect of the
18 patient's medical condition or treatment alternatives;

- 19 (3) The pharmacist makes personal recommendations regarding
20 selecting a pharmacy benefits manager based on the pharmacist's
21 personal knowledge of the health needs of the patient;

- 22 (4) The pharmacy or pharmacist protests or expresses

23 disagreement with a decision, policy, or practice of the pharmacy
24 benefits manager;

25 (5) The pharmacy or pharmacist has, in good faith,
26 communicated with or advocated on behalf of any patient related to the
27 needs of the patient regarding the method by when the pharmacy or
28 pharmacist is compensated for services provided under the contract
29 with the pharmacy benefits manager;

30 (6) The pharmacy or pharmacist complains to the board or
31 commissioner that the pharmacy benefits manager has failed to comply
32 with sections 338.316 to 338.329; or

33 (7) The pharmacy or pharmacist asserts rights under the
34 contract with the pharmacy benefits manager.

35 3. Termination of a pharmacy benefits manager contract or
36 termination of a pharmacy or pharmacist from a pharmacy benefits
37 manager's provider network shall not release the pharmacy benefits
38 manager from the obligation to make any payment due to the pharmacy
39 or pharmacist for pharmacist's services rendered.

40 4. No pharmacy or pharmacist shall be held responsible for acts
41 or omissions of a pharmacy benefits manager.

338.319. In handling moneys received by the pharmacy benefits
2 manager for pharmacist's services, the pharmacy benefits manager acts
3 as a fiduciary of the pharmacy or pharmacist who provided the
4 services. If a pharmacy benefits manager processes claims via
5 electronic review then it shall electronically transmit payment within
6 seven calendar days of such claims transmission to the pharmacist or
7 pharmacy. Specific time limits for the pharmacy benefits manager to
8 pay the pharmacist for all other services rendered shall be set forth in
9 the agreement. Within twenty-four hours of a price increase
10 notification by a manufacturer or supplier, the pharmacy benefits
11 manager shall adjust its payments to the pharmacist or pharmacy
12 consistent with the price increase. Claims paid by the pharmacy
13 benefits manager shall not be retroactively denied or adjusted after
14 seven days from adjudication of such claims except as provided in this
15 section. In no case shall acknowledgment of eligibility be retroactively
16 reversed. The pharmacy benefits manager may retroactively deny or
17 adjust in the event the original claim was submitted fraudulently, the
18 original claim payment was incorrect because the provider was already

19 paid for services rendered, or the services were not rendered by the
20 pharmacist or pharmacy. A pharmacy benefits manager shall distribute
21 all moneys they receive for pharmacist's services to pharmacies and
22 pharmacists who provided the pharmacist's services and shall do so
23 within fourteen days. A pharmacy benefits manager shall itemize by
24 individual claim the amounts the pharmacy benefits manager actually
25 paid each pharmacy or pharmacist for pharmacist's services on any
26 invoice, statement, or remittance. If a pharmacy benefits manager
27 processes claims by electronic review, then it shall electronically
28 provide payment remittances by the complaint transmittal standards
29 of the federal Health Insurance Portability and Accountability Act of
30 1996, as amended, without charge to the pharmacy or pharmacist.

338.320. 1. A pharmacy benefits manager, at the time of the
2 contract, shall list their audit procedures and the basis of the audits.
3 If the pharmacy benefits manager changes such procedures, the
4 pharmacy benefits manager shall notify the providers in writing.

5 2. If a pharmacy benefits manager intends to audit the pharmacy
6 claim, the pharmacy benefits manager shall pay the charges submitted
7 at one hundred percent of the contracted rate on the claim no later
8 than the fourteenth day after the date the insurer receives the clean
9 claim from the pharmacy. The pharmacy benefits manager shall clearly
10 indicate on the explanation of payment statement that the clean claim
11 is being paid at one hundred percent of the contracted rate, subject to
12 completion of the audit.

13 3. Extrapolation calculations in an audit are prohibited.

14 4. A pharmacy benefits manager shall not recoup any moneys
15 due from an audit by setoff from future remittances until the results of
16 the audit are finalized, including resolution of any challenges to the
17 audit.

18 5. A pharmacy benefits manager shall not retain any moneys
19 obtained from the audit of a pharmacy or pharmacist in excess of the
20 actual direct costs of conducting the audit. All remaining proceeds
21 shall be returned to the insured or employer.

22 6. A pharmacy benefits manager shall not recoup any moneys as
23 a result of the audit of a pharmacy or pharmacist unless the audit is
24 concluded within one hundred eighty days after the pharmacist
25 provides the services that are the subject of the audit.

26 7. A pharmacy benefits manager may only perform an on-site
27 audit at a pharmacy once yearly unless fraud or illegal activity is
28 suspected.

29 8. Provisions of this section shall not be waived, voided, or
30 nullified by contract.

 338.321. 1. To the extent that a pharmacy benefits manager uses
2 benchmarks in computing reimbursement for medications and products
3 dispensed by pharmacies or pharmacists with whom the pharmacy
4 benefits manager contracts, the benchmarks shall be current, nationally
5 recognized benchmarks as follows:

6 (1) For brand drugs, either the benchmark price as listed in First
7 Data Bank, Hearst Publications, or Facts & Comparisons, formerly
8 Medispan, as they existed on January 1, 2006; and

9 (2) For generic drugs, the maximum allowable costs shall not be
10 less than the reasonably available market price in Missouri, as
11 determined by Missouri Medicaid.

12 The benchmarks shall be calculated with the same National Drug Code
13 (NDC) benchmark price as used when calculating the charge for such
14 prescription to the recipient of the medication and the covered entity.

15 2. If the publications specified in subsection 1 of this section
16 cease to be nationally recognized benchmarks used to base
17 reimbursement for medications and products dispensed by pharmacies
18 and pharmacists, other current nationally recognized benchmarks, as
19 are then current and in effect, may be utilized so long as the
20 benchmark is established and published by a person, business, or other
21 entity with which no pharmacy benefits manager has a financial or
22 business interest or connection.

23 3. No pharmacy benefits manager may place two drugs in the
24 same category for application of a maximum allowable cost unless both
25 drugs are in compliance with pharmacy laws as equivalent and
26 generically interchangeable with a United States Food and Drug
27 Administration Orange Book rating of "A.", as it existed on January 1,
28 2006.

 338.322. 1. No pharmacy benefits manager or representative of
2 a pharmacy benefits manager may cause or knowingly permit the use
3 of any advertisement, promotion, solicitation, proposal, or offer that is
4 untrue, deceptive, or misleading.

5 2. No pharmacy benefits manager shall discriminate on the basis
6 of race, creed, color, sex, or religion in the selection of pharmacies or
7 pharmacists with which the pharmacy benefits manager contracts.

8 3. A pharmacy benefits manager shall be entitled to access a
9 pharmacy's or pharmacist's usual and customary price only for
10 comparison to specific claims for payment made by the pharmacy or
11 pharmacist to the pharmacy benefits manager. Usual and customary
12 pricing shall be confidential, and any other use or disclosure by the
13 pharmacy benefits manager shall be prohibited.

14 4. A pharmacy benefits manager shall not intervene in the
15 delivery or transmission of prescriptions from the prescriber to the
16 pharmacist or pharmacy for any reason, including influencing the
17 prescriber's choice of therapy, influencing the patient's choice of
18 pharmacist or pharmacy, or altering the prescription information,
19 including but not limited to, switching the prescribed drug without the
20 express authorization of the prescriber.

21 5. No agreement shall mandate that a pharmacist or pharmacy
22 change a covered person's prescription unless the prescribing
23 physician and the covered person authorize the pharmacist to make the
24 change. With regard to the dispensation of a substitute prescription
25 drug for a prescribed drug to a covered individual, when the pharmacy
26 benefits manager requests a substitution, the following provisions
27 apply:

28 (1) The pharmacy benefits manager may request the substitution
29 of a lower-priced generic and therapeutically equivalent drug for a
30 higher-priced prescribed drug;

31 (2) With regard to substitutions in which the substitute drug's
32 net cost is more for the covered individual or the covered entity than
33 the prescribed drug, the substitution shall be made only for medical
34 reasons that benefit the covered individual. If a substitution is being
35 requested under this subsection, the pharmacy benefits manager shall
36 obtain the approval of the prescribing health professional.

37 6. No pharmacy benefits manager shall engage in or interfere
38 with the practice of medicine or intervene in the practice of medicine
39 between prescribers and their patients.

40 7. No pharmacy benefits manager shall avoid responsibility for
41 compliance with any provision in sections 338.316 to 338.329 through

42 the use of an agent or contractor, through an administrator, or through
43 delegation to another person or entity.

44 8. The insurer and the pharmacy benefits manager shall not
45 discriminate with respect to participation in the network or
46 reimbursement as to any pharmacist or pharmacy that is acting within
47 the scope of his or her license or certification.

48 9. The pharmacy benefits manager shall not transfer a health
49 benefit plan to another payment network unless it receives written
50 authorization from the insurer.

51 10. No pharmacy benefits manager shall discriminate when
52 contracting with pharmacies on the basis of co-payments or days of
53 supply. A contract shall apply the same coinsurance, co-payment, and
54 deductible to covered drug prescriptions filled by any pharmacy,
55 including a mail order pharmacy or pharmacist who participates in the
56 network.

57 11. No pharmacy benefits manager shall discriminate when
58 advertising in any media which pharmacies are participating
59 pharmacies. Any list of participating pharmacies shall be complete and
60 all inclusive.

338.323. 1. No pharmacy benefits manager shall receive or
2 accept, directly or indirectly, overtly or covertly, in cash or in kind,
3 any rebate, kickback, or any special payment, favor, or advantage of
4 any valuable consideration or inducement for influencing or switching,
5 in whole or in part, a patient's drug product unless the rebate,
6 kickback, payment, favor, valuable consideration, or inducement is
7 fully disclosed by the pharmacy benefits manager to the person,
8 business, or other entity that is purchasing pharmacist's services
9 through the pharmacy benefits manager. Every pharmacy benefits
10 manager shall disclose the following agreements to the person,
11 business, or other entity that is purchasing pharmacist's services
12 through the pharmacy benefits manager:

13 (1) Any agreement with a pharmaceutical manufacturer to favor
14 the manufacturer's products over a competitor's products or to place
15 the manufacturer's drug on the pharmacy benefits manager's preferred
16 list or formulary, or to switch the drug prescribed by the patient's
17 health care provider with a drug agreed to by the pharmacy benefits
18 manager and the manufacturer;

19 **(2) Any agreement with a pharmaceutical manufacturer to share**
20 **manufacturer rebates and discounts with the pharmacy benefits**
21 **manager or to pay money or other economic benefits to the pharmacy**
22 **benefits manager;**

23 **(3) Any agreement or practice to bill the health plan for**
24 **prescription drugs at a cost higher than the pharmacy benefits**
25 **manager pays the pharmacy;**

26 **(4) Any agreement to share revenue with a mail order or Internet**
27 **pharmacy company; and**

28 **(5) Any agreement to sell prescription drug data, including data**
29 **concerning the prescribing practices of the health care providers in the**
30 **state.**

31 **2. The use of a medication's National Drug Code (NDC)**
32 **benchmark price in billing for prescriptions shall be:**

33 **(1) No greater per unit than the highest listed NDC benchmark**
34 **price as available to retail or hospital pharmacy practice; and**

35 **(2) No greater per unit than the lowest listed National Drug Code**
36 **(NDC) benchmark price used by the pharmacy benefit manager when**
37 **calculating the reimbursement to any pharmacist in the network.**

38 **A pharmacy benefits manager shall only bill a covered entity for**
39 **equivalent price of those commonly used bottles.**

40 **3. A pharmacy benefits manager shall itemize by individual**
41 **claim, the prescription number, the eleven digit NDC number, the**
42 **quantity and the amount the pharmacy benefits manager actually paid**
43 **each pharmacy or pharmacist and the amount charged to the person,**
44 **business, or other entity that is purchasing pharmacist's services**
45 **through the pharmacy benefits manager.**

338.324. 1. A pharmacy benefits manager shall provide to a
2 covered entity all financial and utilization information requested by
3 the covered entity relating to the provision of benefits to covered
4 individuals through that covered entity and all financial and utilization
5 information relating to services to that covered entity. A pharmacy
6 benefits manager providing information under this section shall
7 designate that material as confidential. Information designated as
8 confidential by a pharmacy benefits manager and provided to a covered
9 entity under this section shall not be disclosed by the covered entity to
10 any person without the consent to the pharmacy benefits manager,

11 **except that disclosure may be made when authorized by a court.**

12 **2. A pharmacy benefits manager shall disclose to the covered**
13 **entity all financial terms and arrangements for remuneration of any**
14 **kind that apply between the pharmacy benefits manager and any**
15 **prescription drug manufacturer or labeler, including, without**
16 **limitation, rebates, formulary management and drug-switch or**
17 **substitution programs, educational support, claims processing, or**
18 **pharmacy network fees that are charged from retail pharmacies and**
19 **data sales fees.**

20 **3. A pharmacy benefits manager shall disclose to the covered**
21 **entity whether there is a difference between the price paid to retail**
22 **pharmacy and the amount billed to the covered entity for said**
23 **purchase.**

24 **4. The covered entity shall audit the pharmacy benefits**
25 **manager's books and records related to the rebates or other**
26 **information provided in subsections 1 to 3 of this section. The covered**
27 **entity may have the pharmacy benefits manager's books and records**
28 **related to the rebates or other information to the extent the**
29 **information relates directly or indirectly to such covered entity's**
30 **contract and is audited in accordance with the terms of the pharmacy**
31 **benefits management services contract between the parties. However,**
32 **if the parties have not expressly provided for audit rights and the**
33 **pharmacy benefits manager has advised the covered entity that other**
34 **reasonable options are available and subject to negotiation, the covered**
35 **entity may have such books and records audited if:**

36 **(1) Such audits are conducted no more frequently than once in**
37 **each twelve-month period upon not less than thirty business days'**
38 **written notice to the pharmacy benefits manager;**

39 **(2) The covered entity selects an independent firm to conduct**
40 **such audit, and such independent firm signs a confidentiality**
41 **agreement with the covered entity and the pharmacy benefits manager**
42 **ensuring that all information obtained during such audit will be**
43 **treated as confidential.**

44 **5. No pharmacy benefits manager shall intervene in the delivery**
45 **or transmission of prescriptions from the prescriber to the pharmacist**
46 **or pharmacy for the purpose of:**

47 **(1) Influencing the prescribers choice of therapy;**

48 **(2) Influencing the patient's choice of pharmacist or pharmacy;**
49 **or**

50 **(3) Altering the prescription information, including, but not**
51 **limited to, switching the prescribed drug without the express**
52 **authorization of the prescriber.**

338.325. Medication Therapy Management Services (MTMS)
2 **programs shall be provided by pharmacy benefits managers to improve**
3 **the pharmaceutical care of clients of their Missouri covered**
4 **entities. Pharmacists and pharmacies shall be the providers of Medication**
5 **Therapy Management Services (MTMS) programs. Appropriate**
6 **compensation shall be paid to pharmacists for this pharmaceutical**
7 **care. Medication Therapy Management Services (MTMS) programs**
8 **shall be designed by the patient's pharmacy or pharmacist and**
9 **physician of choice.**

338.326. To avoid impairment of existing contracts, sections
2 **338.316 to 338.329 shall apply only to contracts entered into or renewed**
3 **after August 28, 2006.**

338.327. 1. The board of pharmacy shall adopt procedures for
2 **formal investigation of complaints concerning the failure of a pharmacy**
3 **benefits manager to comply with sections 338.316 to 338.329.**

4 **2. The board of pharmacy shall receive complaints for failures**
5 **to comply with sections 338.316 to 338.329 if the complaint involves a**
6 **professional or patient health or safety issue. The board of pharmacy**
7 **shall refer complaints under sections 338.316 to 338.329 to the**
8 **department of insurance if the complaint involves a business or**
9 **financial issue.**

338.328. 1. Sections 338.316 to 338.329 shall be supplemental to
2 **all other laws and shall govern pharmacy benefits managers**
3 **notwithstanding any other law to the contrary.**

4 **2. Nothing in sections 338.316 to 338.329 shall be construed to**
5 **limit the power of the Missouri state board of pharmacy to regulate the**
6 **practice of pharmacy by any person, business, or other entity.**

338.329. Nothing in sections 338.316 to 338.329 shall be construed
2 **to prohibit, alter, or limit in any way the power of the attorney general**
3 **from pursuing a cause of action against a pharmacy benefits manager.**